sion, without reasonable excuse, a prohibited publication, an offence punishable under section 4(2) of the Undesirable Publications Act 1967. She was found guilty and was given a conditional discharge for twelve months.

The Public Prosecutor now appeals against the order of conditional discharge and the accused has cross-appealed against her conviction.

The facts are simple. The accused was a pillion rider on a motor cycle ridden by a friend. They had together been at the premises of a musical society. At the junction of Arab Street and Victoria Street they stopped, because of the traffic lights, alongside a stationary car in which were four police officers, who were on rounds in a police staff car. One of the police party, a detective corporal, noticed the accused had on her lap a blue plastic bag, the strap of which she held with her left hand, whilst under her right arm was a musical instrument, a cymbal. When the traffic lights turned green the motor cycle turned left into Victoria Street and the detective corporal instructed the driver of the police car to intercept the motor cycle because he thought they were behaving in a suspicious and frightened manner.

He identified himself to the accused and her companion as a police officer and searched the contents of the blue plastic bag. Among other documents in this bag was a song booklet which is a prohibited publication.

The accused in her defence stated that she did not have the plastic bag on her lap. She said the bag was not hers but belonged to her companion, the rider, and that it was hanging from the handle of the motor cycle. She denied knowledge of the contents of the plastic bag. The rider of the motor cycle gave evidence that the bag belonged to him, inside which was a a jacket, toothbrush and toothpaste and that it was hanging from the handle of the motor cycle.

The magistrate accepted the prosecution evidence that the plastic bag was on the lap of the accused and convicted her. In his grounds of decision he stated:—

"The defence only disputed the facts established by the prosecution as to the place where the bag was found. Other than denying ownership, no where in her evidence did the accused say she did not know the contents of the booklet. The presumption which arose under section 4(3) therefore was unrebutted. Furthermore, no reasonable excuse was given by the accused as to how she had the booklet in her possession. No doubt was raised and the defence had failed to rebut the prosecution case. I therefore convicted the accused."

Section 4(2) and (3) of the Undesirable Publications Act 1967 provides thus:—

"4(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom shall be guilty of an offence and shall be liable for a first offence to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for a term not exceeding two years.

(3) In any proceedings against any person for an offence under subsection (2) of this section such person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into his possession."

The presumption under section 4(3) relates to knowledge of the contents and nature of the contents of any publication immediately after such publication came into the possession of a person accused of any offence under section 4(2). There is no presumption that such an accused person knows the contents of a bag which is under his or her control. Nor is there any presumption that an accused person who has control of a bag has possession of the contents of the bag. The onus was therefore on the prosecution to prove that the accused had possesson of the contents of the bag which was under her control. Once that onus was discharged the prosecution can then rely on the presumption under section 4(3).

The magistrate clearly misdirected himself on the element of possession of the contents of the blue plastic bag and furthermore he misdirected himself when he stated that the accused "no where in her evidence . . . . say she did not know the contents of the booklet". The record clearly discloses that she denied any knowledge of the contents of the blue plastic bag and it must necessarily be inferred that she denied knowledge of the contents of any publication found in it.

I would accordingly allow the appeal of the accused and quash the conviction.

Appeal of accused allowed. Conviction quashed.

Solicitors: *Laycock & Ong.*

CHARJIT SINGH TULSI v. TEO KIM KOW

[A.C.J. (Wee Chong Jin C.J.) April 24, 1969]

[Singapore — District Court Appeal No. 17 of 1868]

Practice and Procedure — Subordinate court — Service — Person to be served acting in person — Notice of hearing sent by ordinary post — Service held to be improper — Instalment order set aside — District Court Rules, 1941, O. 12 r. 3(1)(b).

The defendant/respondent applied to the Civil District Court for an order that the amount unpaid under a judgment debt be paid by instalments. The notice of hearing was posted to the appellant/plaintiff, who acted in person, by ordinary post. At the hearing before the 3rd District Judge, the appellant/plaintiff was not present and an instalment order was

made. The appellant applied to have the instalment order set aside on the ground that he was not duly served with the respondent's application. This application was heard and dismissed by the 2nd District Judge. The appellant appealed to the High Court.

Held, allowing the appeal: the respondent's application must be served on the appellant. As the appellant was a party acting in person he ought to have been served in one of the three modes provided in Order 12 rule 3(1)(b) of the District Court Rules, *viz.* (i) by delivering the document to him, or (ii) by delivering the document at his address for service to any adult inmate there, or (iii) by posting the same in a prepaid registered envelope addressed to him at his address for service. As the application was not served in accordance with the rules the instalment order ought to have been set aside.

CIVIL DISTRICT COURT APPEAL.

J.B. Jeyaretnam (*Joseph Hoo* with him) for the appellant.

J.L.R. Pillai for the respondent.

Wee Chong Jin C.J.: The plaintiff/appellant on the 1st April 1967 obtained a judgment in the Civil District Court for the sum of $943.73 and costs against the defendant/respondent. While the judgment debt was in part unsatisfied the judgment debtor, defendant/respondent, on the 25th September 1968, applied to the Civil District Court in Application No. 3567 of 1968 to pay the balance of the judgment debt by monthly instalments of $10. The court fixed the hearing of that application for Thursday, 3rd October 1968.

Order 25 rule 13(2) of the District Court Rules provides that notice of an application to pay a judgment debt by instalments "shall be served on the party entitled to enforce the judgment at least two days before the application is heard."

A notice of hearing, addressed to the plaintiff/appellant, at No. 46 Amber Road, Singapore (which was the address given in the writ of summons), was posted by ordinary post on the 26th September 1968.

On the date fixed for the hearing of the application, the plaintiff/appellant did not appear and the 3rd Civil District Judge, who heard the application made an order that the amount unpaid under the judgment be paid by monthly instalments of $20 with effect from 1st November, 1968.

On the 9th October, 1968, the plaintiff/appellant applied to the Civil District Court to set aside the instalment order. In support of his application he made an affidavit affirming that he had not been served with notice of the defendant/respondent's application. He had been informed by a friend of the fact that an instalment order had been made in his absence on the 3rd October, 1968.

On the 11th October the 2nd Civil District Judge heard and rejected the plaintiff/appellant's application on the ground that the notice of hearing of the defendant/respondent's application had been duly served on the plaintiff/appellant. The 2nd Civil District Judge held that Order 12 rule 5 of the Civil District Court Rules applied. Rule 5 reads as follows:—

"Unless otherwise ordered by the judge or registrar any notice sent from any office of the court may be sent by ordinary post. The notice shall be deemed to have been served at the time when it would have been delivered in the ordinary course of post."

The plaintiff/appellant contends that the 2nd Civil District Judge was wrong in holding that Order 12 rule 5 applied and should have held that Order 12 rule 3 applied and that as plaintiff/appellant was acting in person the notice of hearing of the defendant/respondent's application should have been served in accordance with Order 12 rule 3(1)(b).

Order 12 rule 3 provides as follows:—

"3. (1) Where in any proceedings any document is required to be served on any person and no other mode of service is prescribed by any statute or rule, the following provisions shall apply:—

(a) Where the person to be served is represented by a solicitor whose name is indorsed on any summons or process issued on behalf of such person in the proceedings or who has filed a notice in accordance with O. 11, r. 2, service shall be effected —

(i) by delivering the document at the solicitor's address for service; or

(ii) by sending it by prepaid registered post addressed to the solicitor at his address for service.

(b) Where the person to be served is acting in person, service shall be effected —

(i) by delivering the document to him; or

(ii) by delivering the document at his address for service to any adult inmate there; or

(iii) by posting the same in a prepaid registered envelope addressed to him at his address for service.

(c) Where no address for service has been given or where a solicitor on the record for a party has died or been struck off the roll or suspended from practice, or has been discharged under Order 11 rule 3 or 4 and no new address for service has been given by that party, service may be effected on the person to be served —

(i) by delivering the document to him; or

(ii) by delivering the document at his residence to any adult inmate there. or, if he is the proprietor of a business, at his place of business; or

(iii) by sending the document by prepaid registered post addressed to him at his last known residence, or, if he is the proprietor of a business, at his last known place of business.

(2) When the document is sent by registered post, it shall unless the contrary be proved, be deemed to to have been served at the time when it would have been delivered in the ordinary course of post.

"Document" is defined in Order 12 rule 1 to include summons, notice, order and other process and a written communication, unless there is something repugnant in the context.

In my judgment, it is clear that Order 25 rule 13(2) requires that notice of the defendant/respondent's application must be served on the plaintiff/appellant. It is also clear that this notice is, by virtue of the definition of "document" in Order 12 rule 1, a document. It is also clear that Order 12 rule 3 governs the mode of service of any document which is required to be served on any person where no other mode of service is prescribed by any statute or rule.

In my judgment, the plaintiff/appellant being a party acting in person, ought to have been served in one of the three modes provided in Order 12 rule 3(1)(b). It follows therefore that the 2nd Civil District Judge ought to have set aside the instalment order made by the 3rd Civil District Judge. The appeal is allowed with costs and there will be an order that the instalment order made by the 3rd Civil District Judge in Apprication No. 3567 of 1968 be set aside.

Appeal allowed.

Solicitors: *Advani & Hoo; Pillai & Co.*

IN RE FAIR INSURANCE CO. LTD.

[O.C.J. (Raja Azlan Shah J.) May 13, 1969]

[Kuala Lumpur—Companies Winding Up No. 44 of 1962]

Companies — Voluntary winding up — Winding up subject to supervision of court — Power of court to remove liquidators — Companies Ordinance, 1940-1946, ss. 183, 242, 251.

In this case the company was being voluntarily wound up by liquidators appointed by the company. Subsequently it was ordered that the winding up of the company be continued but subject to the supervision of the court and liquidators were appointed by the court. The applicants applied to remove the liquidators appointed by the court on a number of grounds. They also applied for an additional liquidator.

Held: (1) the court had no power to remove the liquidators under any provision of the Companies Ordinance;

(2) the court had power to appoint an additional liquidator but in the circumstances and as no useful purpose could be served by the appointment, the court would not exercise its discretion to do so.

COMPANIES WINDING UP.

N. Sharma for the applicants.

D.G. Rawson for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application by Yap Phan Kooi and Saw Yew Bee who are the only contributories and directors of Fair Insurance Co. Ltd. which is hereinafter referred to as "the company".

The company was incorporated in 1961 under the Companies Ordinance, 1940-1946. On the coming into force of the Life Assurance Act, 1961, the directors decided to wind up voluntarily. Accordingly, the company went into voluntary winding up on 22nd February, 1962. Yap Hong Thin and V. Kandiah were appointed liquidators.

On 7th May, 1962 Arthur Clarence Gracy, the competent authority under section 8 of the Life Assurance Companies (Compulsory Liquidation) Act, 1962 petitioned that (1) the company be wound up by the court under the provisions of the Companies Ordinance, 1940-1946, and the Life Assurance Companies (Compulsory Liquidation) Act, 1962; (2) Anthony Niblock, Philip Gerald Grundy, Francis Neale Mugliston, Norman Davies Wood and John Arnold Howard of Evatt & Co., Kuala Lumpur be jointly and severally appointed liquidators of the company. On 28th May, 1962, Suffian J. (as he then was) ordered that the voluntary winding up of the company be continued but subject to the supervision of the court. It was further ordered that Anthony Niblock, Philip Gerald Grundy, Francis Neale Mugliston, Norman Davies Wood and John Arnold Howard be jointly and severally appointed liquidators in place of Yap Hong Thin and V. Kandiah. John Arnold was later discharged.

On 19th June, 1964, Yap Phan Kooi and Saw Yew Bee applied by way of summons in chambers for the determination of the following questions: (1) whether the liquidators should wind up the affairs of the company as in an ordinary voluntary winding up and/or whether the provisions of the Life Assurance Companies (Compulsory Liquidation) Act, 1962 apply to the winding up; (2) whether policy holders of the company whose policies had lapsed before the coming into operation of the Life Assurance Act, 1961 should still be regarded as creditors of the company; (3) on what basis should those persons whose policies did not lapse on 15th October, 1961 be paid; (4) how should the validity of the claims received by the liquidators be ascertained and whether some representatives of the contributories or the creditors or some other independent person should be associated in the inspection and determination of the validity of such claims. On 15th December, 1964, Gill J. (as he then was) ordered that: (1) the provisions of the Life Assurance Companies (Compulsory Liquidation) Act, 1962 applied to the winding up of the company; (2) policy-holders of the company whose policies had lapsed before the coming into